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Letter dated 21 December 2001 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

The Counter-Terrorism Committee has received the attached report from Australia, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I should be grateful if you would arrange for this letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman of the Counter-Terrorism Committee

* Reissued for technical reasons.

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Annex

[Original: English]

Note verbale dated 21 December 2001 from the Permanent Mission of Australia to the United Nations addressed to the Chairman of the Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

The Permanent Mission of Australia to the United Nations presents its compliments to the Counter-Terrorism Committee of the United Nations Security Council and has the honour to refer to Security Council resolution 1373 (2001).

The Permanent Mission of Australia to the United Nations is pleased to provide Australia's first report to the Counter-Terrorism Committee pursuant to paragraph 6 of Security Council resolution 1373 (2001) of 28 September 2001 (see enclosure). A copy of the report also has been forwarded to the Counter-Terrorism Committee by electronic mail.

Enclosure

Report of Australia to the Counter-Terrorism Committee of the United Nations Security Council pursuant to paragraph 6 of Security Council resolution 1373 (2001) of 28 September 2001

Australia's report to the Counter-Terrorism Committee of the United Nations Security Council on measures taken by the Government of Australia to implement Security Council resolution 1373 (2001) of 28 September 2001 is attached (see appendix).

At the adoption of resolution 1373 (2001), Australia already had in place extensive measures to prevent in Australia the financing of, preparations for and basing from Australia of terrorist attacks on other countries. Australia has sophisticated electronic systems to track the movement of persons and assets that have been utilized in tracking the movement of terrorists and their assets to assist law enforcement agencies in the United States investigating the surviving perpetrators of the terrorist attacks against the United States on 11 September 2001. Australia also has an extensive network of out-placed law enforcement liaison officers and bilateral treaties on extradition and mutual legal assistance in criminal matters to facilitate cooperation with other countries in the prevention, investigation and prosecution of terrorist acts.

Australia has developed a highly coordinated domestic counter-terrorism response strategy incorporating law enforcement, security and defence agencies, with the operational experience of protecting the Summer Olympic Games held in Sydney in September 2000 and in full readiness to protect the meeting of the Commonwealth Heads of Government to take place in Queensland, Australia, in March 2002.

In response to the 11 September 2001 attacks against the United States and with a view to the full and early implementation of resolution 1373 (2001), the Australian Government convened task forces to review Australia's systemic and legislative preparedness to prevent or to respond to such an attack in Australia and to freeze any Australian assets of terrorists and their sponsors. As a consequence of this review, the Government will introduce to Parliament new legislation designed to strengthen Australian law enforcement capability against terrorism.

Of the 11 international counter-terrorism instruments that establish specific classes of terrorist offence, Australia is a party to 9 and intends to become a party to the remaining 2 once the Australian Parliament has passed the requisite legislation.

Canberra, Australia
21 December 2001

Appendix

Report of Australia to the Counter-Terrorism Committee pursuant to paragraph 6 of Security Council resolution 1373 (2001) of 28 September 2001

Operative Paragraph 1

Sub-paragraph 1(a) *Decides that all States shall ... Prevent and suppress the financing of terrorist acts:*

1. The Australian Government has established a Working Group on Australian Financial Controls on Terrorists and Sponsors of Terrorism to coordinate and implement the Commonwealth Government's financial control initiatives in relation to the blocking of terrorist funds. The Working Group comprises the Federal Departments of Foreign Affairs and Trade, the Treasury and the Attorney-General's Department, the Australian Federal Police (AFP), the Australian Security Intelligence Organisation (ASIO), the Australian Transaction Reports and Analysis Centre (AUSTRAC), the Director of Public Prosecutions and the Reserve Bank of Australia.

2. On 3 October 2001, the Government directed the Reserve Bank of Australia under the *Banking (Foreign Exchange) Regulations* to stop any payments in Australia by, or to, the terrorists and terrorist organisations identified in US Executive Order 13224. The effect of this direction is to prohibit all transactions involving the transfer of funds or payments to, by the order of, or on behalf of, the listed persons and entities. Any accounts in Australia of such persons and entities are thus effectively frozen. Further names were subsequently added to the proscribed list on 17 October and 9 November 2001.

3. On 6 October 2001, AUSTRAC issued a notification to all cash dealers under the *Financial Transactions Reports Act 1988* (Information Circular Number 22) annexing the list of suspected terrorist names and entities identified in US Executive Order 13224. Under the Act, any cash dealer that has reasonable grounds to suspect that information concerning a transaction, or an attempted transaction, may be relevant to the investigation of a breach of a law in Australia, must make a report to the Director of AUSTRAC. The effect of AUSTRAC's notification is to oblige cash dealers to report suspect transactions and international funds transfers involving persons or entities on the list. A cash dealer is required to lodge a suspect transaction report as soon as practicable after forming a suspicion. The Government will formalise this arrangement through amendments to the *Financial Transaction Reports Act 1988* to ensure the reporting of possible terrorist-related transactions and international funds transfers.

4. "Cash dealers" include:

- financial institutions and corporations, insurers or insurance intermediaries, securities dealers, futures brokers, and stock market Registrars;

- trustees or managers of unit trusts;

- persons who sell bullion or carry on a business of issuing, selling or redeeming travellers cheques, money orders or similar instruments;

- persons who deliver currency (including payrolls) or who deal with currency on behalf of other persons in the following ways: collecting and holding currency, exchanging one currency for another, converting currency into prescribed commercial instruments, remitting or transferring currency or prescribed commercial instruments into or out of Australia or arranging for such remittance or transfer, preparing pay-rolls in whole or in part from currency collected; and

- bookmakers and persons who carry on a business of operating a gambling house or casino.

Sub-paragraph 1(b) *Decides that all States shall ... Criminalize the wilful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts;*

5. Section 7 of the *Crimes (Foreign Incursions and Recruitment) Act 1978* makes it an offence to, *inter alia*:

- give money or goods to, or perform services for, any other person or any body or association of persons, or

- to receive or solicit money or goods, or the performance of services,

for the purpose of supporting or promoting:

- a person to enter a foreign State with intent to engage in a hostile activity in a foreign State, or

- a person to engage in a hostile activity in that foreign State.

6. Section 6 of the Act defines "engaging in a hostile activity in a foreign State" as consisting of doing an act (other than in the course of, and as part of, service in any capacity in or with the armed forces of the government of a foreign State; or any other armed force in respect of which a declaration by the Minister under the Act is in force) for the purpose of achieving any one or more of the following objectives (whether or not such an objective is achieved):

- the overthrow by force or violence of the government of the foreign State or of a part of the foreign State;

- engaging in armed hostilities in the foreign State;

- causing by force or violence the public in the foreign State to be in fear of suffering death or personal injury;

- causing the death of, or bodily injury to, a person who is the head of state of the foreign State or holds, or performs any of the duties of, a public office of the foreign State or of a part of the foreign State; or

- unlawfully destroying or damaging any real or personal property belonging to the government of the foreign State or of a part of the foreign State.

7. Clause 10(1) of the *Charter of the United Nations (Anti-terrorism Measures) Regulations* makes it an offence to, directly or indirectly, make an asset available to a person or entity listed by the Minister for Foreign Affairs in the *Commonwealth Gazette* for being a person or entity mentioned in paragraph 1(c) of Resolution 1373.*

8. On 18 December 2001, the Federal Attorney-General announced that the Government will introduce amendments to the *Criminal Code Act 1995* to make funding of terrorism a specific criminal offence. This would cover collection, receipt, use and provision of funds for the preparation and planning of terrorist activities. Knowingly assisting in any of these activities would also be an offence. The offences would carry a maximum penalty of 25 years imprisonment.

Sub-paragraph 1(c) *Decides that all States shall ... Freeze without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; of entities owned or controlled directly or indirectly by such persons; and of persons and entities acting on behalf of, or at the direction of such persons and entities, including funds derived or generated from property owned or controlled directly or indirectly by such persons and associated persons and entities;*

9. Clause 9(1) of the *Charter of the United Nations (Anti-terrorism Measures) Regulations* makes it an offence for a person who holds:

* For the first two published lists containing the names of these persons and entities, see the attachment.

- an asset that is owned or controlled by a person or entity listed by the Minister in the *Commonwealth Gazette* as a person or entity mentioned in paragraph 1(c) of Resolution 1373, or

- an asset that is listed by the Minister for Foreign Affairs in the *Commonwealth Gazette*, or

- an asset that is derived or generated from either of the above classes of assets,

to use or deal with the asset; or allow the asset to be used or dealt with; or to facilitate the use of the asset or dealing with the asset. Thus the assets referred to in Clause 9(1) are effectively frozen. See also the response to sub-paragraph 1(a), paragraph 2, on additional measures taken to freeze the assets of persons included in US Executive Order 13224.

10. The Working Group referred to in paragraph 1 has prepared an Explanatory Note to assist asset holders with fulfilling their obligations under these Regulations. The Explanatory Note is available on the Department of Foreign Affairs and Trade website: www.dfat.gov.au.

Sub-paragraph 1(d) *Decides that all States shall ... Prohibit their nationals or any persons and entities within their territories from making any funds, financial assets or economic resources or financial or other related services available, directly or indirectly, for the benefit of persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts, of entities owned or controlled, directly or indirectly, by such persons and of persons and entities acting on behalf of or at the direction of such persons;*

11. See response for sub-paragraph 1(b).

Operative Paragraph 2

Sub-paragraph 2(a) *Decides also that all States shall ... Refrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts, including by suppressing recruitment of members of terrorist groups and eliminating the supply of weapons to terrorists;*

12. Section 7(1) of the *Crimes (Foreign Incursions and Recruitment) Act 1978* makes it an offence for a person, whether within or outside Australia, to do any of the following acts in preparation for, or for the purpose of, engaging in a hostile activity in a foreign State, whether by that person or by another person:

- any preparatory act;

- accumulate, stockpile or otherwise keep arms, explosives, munitions, poisons or weapons;

- train or drill or participate in training or drilling, or be present at a meeting or assembly of persons with intent to train or drill or to participate in training or drilling, any other person in the use of arms or explosives, or the practice of military exercises, movements or evolutions;

- allow himself or herself to be trained or drilled, or be present at a meeting or assembly of persons with intent to allow himself or herself to be trained or drilled, in the use of arms or explosives, or the practice of military exercises, movements or evolutions;

- give money or goods to, or perform services for, any other person or any body or association of persons;

- receive or solicit money or goods, or the performance of services;

- being the owner, lessee, occupier, agent or superintendent of any building, room, premises or place, knowingly permit a meeting or assembly of persons to be held in the building, room, premises or place for any of the above purposes; or

- being the owner, charterer, lessee, operator, agent or master of a vessel or the owner, charterer, lessee, operator or pilot in charge of an aircraft, knowingly permit the vessel or aircraft to be used for any of the above purposes.

For the definition of "engaging in a hostile act against a foreign State", see the response to sub-paragraph 1(b) at paragraph 6.

13. Section 8 of the *Crimes (Foreign Incursions and Recruitment) Act 1978* makes it an offence for a person in Australia to recruit another person to become a member of, or to serve in any capacity with, a body or association of persons the objectives of which are or include:

- the overthrow by force or violence of the government of the foreign State or of a part of the foreign State;

- engaging in armed hostilities in the foreign State;

- causing by force or violence the public in the foreign State to be in fear of suffering death or personal injury;

- causing the death of, or bodily injury to, a person who is the head of state of the foreign State or holds, or performs any of the duties of, a public office of the foreign State or of a part of the foreign State; or

- unlawfully destroying or damaging any real or personal property belonging to the government of the foreign State or of a part of the foreign State.

14. The Australian Government imposes strict controls on the import and possession of firearms, and the export of defence and dual-use goods from Australia, which would have the effect of preventing such goods being supplied to terrorists.

15. In Australia, the Federal Government has responsibility for importation, export and international aspects of firearms control, while the States and Territories are responsible for domestic licensing and registration regimes. All persons who wish to possess a firearm must be licensed for the particular category of firearm they are seeking, having established that they have a genuine reason to use such a firearm. In addition, all firearms must be registered against a licence and all licence holders must acquire a permit for the purchase of each firearm. The *Customs (Prohibited Imports) Regulations 1956* prohibit, except for defined special purposes, the importation of certain classes of firearms. Broadly, classes of firearms which are prohibited under this regime include high-powered automatic and semi-automatic firearms and pump action shotguns. Fully automatic firearms can only be imported for the Australian military, while semi-automatic firearms and pump action shotguns can only be imported for use by police or other government purposes or specified occupational purposes (e.g. primary producers, hunters of feral animals).

16. Export controls cover a wide range of defence and related goods and technologies, nuclear related goods and goods and technologies with both civil and military applications. The controls also cover goods being exported after or for repair, and the temporary export of items for demonstration or loan purposes. The list of goods controlled forms the Defence and Strategic Goods List and includes equipment, assemblies and components, associated test, inspection and production equipment, materials, software and technology. Goods listed in the Defence and Strategic Goods List may only be exported from Australia with the permission of the Minister for Defence or a person authorised by the Minister to issue permits and licences. Only the Minister for Defence may deny an approval to export or revoke a permit or licence if a condition of the permit or licence is breached or foreign policy or strategic circumstances change significantly in the country to which goods are to be exported. More detailed information on Australia's export control regime, and a copy of the Defence and Strategic Goods List, is available on the Defence Materiel Organisation's website:

http://www.dmo.defence.gov.au/id/export/dsec/dld_dsgl.cfm

Sub-paragraph 2(b) *Decides also that all States shall ... Take the necessary steps to prevent the commission of terrorist acts, including by provision of early warning to other States by exchange of information;*

Australian Counter-Terrorism Arrangements

17. Australia has in place sophisticated counter-terrorism arrangements. These arrangements have been regularly exercised and refined, most recently in the lead up to the September 2000 Sydney Olympic Games and the lead up to the Commonwealth Heads of Government Meeting that had been scheduled to take place in Brisbane in October 2001.

18. Following the terrorist attacks on the United States on 11 September 2001, the Government reviewed Australia's counter-terrorism preparedness and will introduce new measures designed to further strengthen counter-terrorism capabilities. These will include:

- giving the Australian Security Intelligence Organisation (ASIO) the power to question people who may have information about terrorism, including those who may not themselves be involved in terrorist activity. This will extend to a power to seek to detain people for up to 48 hours without legal representation in very serious cases where such a step is necessary to prevent a terrorist attack. The Director-General of Security, with the consent of the Attorney-General, would be required to seek a warrant requiring a person to appear before a prescribed authority to provide information or produce documents or things. A warrant would be issued by a federal magistrate, or a senior legal member of the Administrative Appeals Tribunal (AAT) with legal qualifications. ASIO would also be required to give the Inspector-General of Intelligence and Security a copy of any warrant that is issued and a statement containing details of any detention that takes place.

- amending the *Telecommunications (Interception) Act 1979* to include terrorism offences in the definition of "class 1 offences" for the purposes of telecommunications interception warrants; and to permit access to unread e-mails where another form of lawful access to the system or device capable of displaying the communication is held by the relevant agency (at present, an agency with a valid search warrant cannot access e-mail communications unless they have been read, or otherwise consciously dealt with, by the intended recipient).

19. In addition, the Government has announced a number of measures that will be put in place either immediately or in the very short term to shore up Australia's counter-terrorism arrangements:

- an air security officers program on flights provided by Australian air carriers by 31 December 2001;

- introduction of new laws about transmission of dangerous substances and hoax offences.

Australian Federal Police "Operation Drava"

20. The Australian Federal Police (AFP) has established Operation Drava in response to the events of 11 September 2001. Operation Drava inquiries and investigations have received (and continue to receive) priority within the AFP. The AFP has established regional teams around Australia to handle local investigations, including assisting partner agencies with executing entry and search warrants, conducting interviews and obtaining relevant documentation from financial institutions. The activities of the regional teams are overseen by an AFP Headquarters coordinating team, with specialised staff seconded from various areas within the organisation.

21. AFP Operation Drava inquiries are also being progressed through co-operation with a number of overseas police services, Interpol, the US Federal Bureau of Investigation and AFP domestic partner agencies including the Australian Customs Service, the Department of Immigration and Multicultural and Indigenous Affairs, Department of Defence and the Australian Security and Intelligence Organisation.

Sub-paragraph 2(c) *Decides also that all States shall ... Deny safe haven to those who finance, plan, support, or commit terrorist acts, or provide safe havens;*

22. Australia has a comprehensive system to exclude or remove non-Australian citizens from Australia on the grounds that they are of character or security concern to Australia. Persons who finance, plan, support or commit terrorist acts, or who provide safe haven for such persons, would be of character and security concern to Australia.

Character and security checks

23. Only Australian citizens have the unrestricted right to travel freely in and out of Australia. Non-citizens must have an authority, in the form of a visa, to enter and stay in Australia. Non-citizens who arrive without valid visas [are interviewed in immigration clearance and a decision is made to either allow or refuse entry. (For immigration clearance procedures, see paragraphs 60 to 63 below). Where non-citizens without a valid visa apply for Australia's protection in immigration clearance, a record of the entry screening interview is forwarded to a delegate of the Minister for Immigration and Multicultural and Indigenous Affairs for a decision as to whether the person *prima facie* engages Australia's protection obligation under the *Convention relating to the Status of Refugees* (Geneva, 1951). If the person is not assessed as engaging Australia's protection obligations, the person will be refused immigration clearance and detained until they can be removed from Australia.

24. Non-citizens who apply to enter or stay in Australia must be of good character. If the Minister (or his or her delegate) is satisfied that the applicant does not meet the good character

requirement, the *Migration Act 1958* provides a power to refuse to grant a visa and to cancel a visa that has already been granted.

25. A person is not of good character if:

- the person has a substantial criminal record; or
- the person has or has had an association with someone else, or with a group or organisation, whom the Minister reasonably suspects has been or is involved in criminal conduct; or
- having regard to the person's past and present criminal conduct and/or the person's past and present general conduct, the person is not of good character; or
- in the event the person were allowed to enter or to remain in Australia, there is a significant risk that the person would:
  - (i) engage in criminal conduct in Australia; or
  - (ii) harass, molest, intimidate or stalk another person in Australia; or
  - (iii) vilify a segment of the Australian community; or
  - (iv) incite discord in the Australian community or in a segment of that community; or
  - (v) represent a danger to the Australian community or to a segment of that community, whether by way of being liable to become involved in activities that are disruptive to, or in violence threatening harm to, that community or segment, or in any other way.

26. In addition to the character test, all applicants for permanent residence visas and certain classes of visa for temporary stay must meet a security standard, according to which they must be assessed as not posing a direct or indirect risk to Australia national security. The security requirement protects the resident Australian community from the actions and influence of people who may threaten the security of the nation through activities such as: espionage, sabotage, politically-motivated violence, promotion of communal violence, attacks on Australia's defence system; or acts of foreign interference.

Movement Alert List

27. The Australian Government has established a computerised database known as the Movement Alert List (MAL) that stores details about people and travel documents of immigration concern to Australia. All visa applicants are checked against the MAL, making it a

key tool used by Australia to apply the legislation governing the entry to and presence in Australia of non-citizens who are of character or security concern. As at October 2001, the names of more than 179,000 people and more than 1.1 million documents of concern — for example lost, stolen or fraudulently altered passports — were entered on MAL.

28. People are entered on MAL when they have serious criminal records, are otherwise barred by migration legislation from entering Australia or when the Government assesses that their presence in Australia may constitute a risk to the Australian community. Details identifying people of concern are recorded on MAL as a result of liaison with law enforcement agencies and other agencies in Australia and overseas.

Deportation powers

29. If a person is already in Australia on a visa that is subsequently cancelled on character or security grounds, such cancellation of the visa renders that person liable to removal from Australia. If the visa is cancelled because of that person's criminal conduct, that person will be permanently excluded from re-entering Australia.

30. Deportation action is also available against permanent residents who, in their first ten years of residence, commit an offence for which they are sentenced to imprisonment for one year or more. In such cases, deportation usually takes place at the end of the prison sentence imposed by the Courts. A person deported from Australia on criminal grounds is permanently excluded from Australia. Deportation action can also be taken against a non-citizen who is the subject of an adverse security assessment, or who has been convicted of very serious offences against the state (treason, treachery, terrorist activity and assassination, etc).

Sub-paragraph 2(d) *Decides also that all States shall ... Prevent those who finance, plan, facilitate or commit terrorist acts from using their respective territories for those purposes against other States or their citizens;*

31. One of the purposes of the *Crimes (Foreign Incursions and Recruitment) Act 1978* is to prevent Australian territory being used as a base for hostile activities against foreign States. The relevant provisions of the Act are explained in detail in the responses to sub-paragraphs 1(b), 2(a) and 2(e). This purpose will be enhanced through the introduction of new counter terrorism measures outlined in the responses to sub-paragraphs 2(e), paragraph 18 and 2(e), paragraph 44.

Sub-paragraph 2(e) *Decides also that all States shall ... Ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice and ensure that, in addition to any other measures against them, such terrorist acts are established as serious criminal offences in domestic*

laws and regulations and that the punishment duly reflects the seriousness of such terrorist acts;

32. Section 6 of the *Crimes (Foreign Incursions and Recruitment) Act 1978* makes it an offence:

- to enter a foreign State with intent to engage in a hostile activity in that foreign State; or
- to engage in a hostile activity in a foreign State.

For a definition of "hostile activity", see response to sub-paragraph 1(b), paragraph 6. The penalty for such an offence is imprisonment for 14 years.

33. Section 7 of the *Crimes (Foreign Incursions and Recruitment) Act 1978* makes it an offence to contribute to the preparation or promotion of the commission of an offence under section 6 (see response to sub-paragraph 1(b) and sub-paragraph 2(a)). The penalty for such an offence is imprisonment for 10 years.

34. Section 8 of the *Crimes (Foreign Incursions and Recruitment) Act 1978* makes it an offence to recruit persons to a group, the objectives of which include the commission of an offence under section 6. The penalty for such an offence is imprisonment for 7 years.

35. The *Crimes (Aviation) Act 1991* makes the offences provided for in the *Convention on Offences and Certain Other Acts Committed on Board Aircraft* (Tokyo, 1963), the *Convention for the Suppression of Unlawful Seizure of Aircraft* (The Hague, 1970) the *Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation* (Montreal, 1971) and the *Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation* (Montreal, 1988) criminal offences under Australian law. Penalties for the offences range from two years to life imprisonment, depending upon the gravity of the offence.

36. The *Crimes (Ships and Fixed Platforms) Act 1992* makes the offences provided for in the *Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation* (Rome, 1988) and the *Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf* (Rome, 1988) criminal offences under Australian law. Penalties for the offences range from two years to life imprisonment, depending upon the gravity of the offence.

37. The *Nuclear Non-Proliferation (Safeguards) Act 1987* makes the offences provided for in the *Convention on the Physical Protection of Nuclear Material* (Vienna, 1980) criminal offences under Australian law. The penalty for each of the offences is A$20,000 or ten years imprisonment or both.

38. The *Crimes (Hostages) Act 1989* makes the offences provided for in the *International Convention against the Taking of Hostages* (New York, 1979) criminal offences under Australian law. The maximum penalty for the offence of "hostage taking" is life imprisonment.

39. The *Crimes (Internationally Protected Persons) Act 1976* makes the offences provided for in the *Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents* (New York, 1973) criminal offences under Australian law. Penalties for the offences range from seven years to life imprisonment, depending upon the gravity of the offence.

40. Section 8 of the *Crimes (Biological Weapons) Act 1976* makes it an offence to develop, produce, stockpile or otherwise acquire or retain:

- microbial or other biological agents, or toxins whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes; or
- weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict.

The maximum penalty for the offence in the case of a natural person is a fine of A$10,000 or imprisonment for life or both. In the case of a corporation, the maximum penalty is a fine of A$200,000.

41. Section 12 of the *Chemical Weapons (Prohibition) Act 1994* makes it an offence to intentionally or recklessly:

- develop, produce, otherwise acquire, stockpile or retain chemical weapons; or
- transfer, directly or indirectly, chemical weapons to another person; or
- use chemical weapons; or
- engage in any military preparations to use chemical weapons; or
- assist, encourage or induce, in any way, another person to engage in any activity prohibited to a State Party under the Convention; or
- use riot control agents as a method of warfare.

The penalty for the offence is imprisonment for life.

42. In addition Australian criminal legislation prohibits activities that may be committed as part of a terrorist operation. For example, the *Crimes Act 1914* creates offences such as treason, treachery, sabotage, sedition and espionage.

43. The *Criminal Code Act 1995* creates offences with respect to causing, or threatening to cause, harm to Commonwealth public officials.

44. The Government will introduce amendments to the *Criminal Code Act 1995* to consolidate the treatment of terrorist offences in Australian criminal law by providing for general terrorism offences into the Code. These will relate to "terrorist activity" which will be defined as an act or omission that constitutes an offence under the UN and other international counter-terrorism instruments, or an act committed for a political, religious or ideological purpose designed to intimidate the public with regard to its security and intended to cause serious damage to persons, property or infrastructure. The amendments will also cover ancillary conduct such as aiding, abetting, conspiracy, attempt and incitement. The offences will carry a maximum penalty of life imprisonment.

Sub-paragraph 2(f) *Decides also that all States shall ... Afford one another the greatest measure of assistance in connection with criminal investigations or criminal proceedings relating to the financing or support of terrorist acts, including assistance in obtaining evidence in their possession necessary for the proceedings;*

Mutual Assistance in Criminal Matters

45. The *Mutual Assistance in Criminal Matters Act 1987* allows Australia to provide the following kinds of international assistance in criminal matters at the request of a foreign country:

- the taking of evidence, or the production of any document or other article, for the purposes of a proceeding in the foreign country;
- the issue of a search warrant and the seizure of any thing relevant to a proceeding or investigation in the foreign country;
- the forfeiture or confiscation of property in respect of a foreign serious offence;
- the recovery of pecuniary penalties in respect of a foreign serious offence;
- the restraining of dealings in property that may be forfeited or confiscated, or that may be needed to satisfy pecuniary penalties imposed, because of the commission of a foreign serious offence.

46. The Act applies to all foreign countries, subject to any mutual assistance treaty between that country and Australia and any multilateral mutual assistance treaty to which both Australia and the other country are Parties. The Act does not prevent the provision of other forms of international assistance in criminal matters.

47. Although the Act precludes assistance in relation to political offences, none of the offences established by the international counter-terrorism instruments to which Australia is Party is considered a "political offence" for the purpose of the Act. See the response to sub-paragraph 3(d) for the list of instruments to which Australia is a Party.

48. The Act includes safeguards to prevent assistance where there are substantial grounds to believe the request was made on account of the person's race, sex, religion, nationality or political opinions, or where the prosecution or punishment concerned would violate the principle of double jeopardy. The Act also allows assistance to be refused where there is no double criminality or on national interest grounds. Finally, the Act restricts the capacity for Australia to provide assistance if it relates to the prosecution or punishment of a person charged with, or convicted of, an offence in respect of which the death penalty may be imposed in the foreign country.

Extradition

49. The *Extradition Act 1988* provides for proceedings by which Australian courts may determine whether a person is to be, or is eligible to be, extradited, without determining the guilt or innocence of the person of an offence, and to enable Australia to carry out its obligations under extradition treaties. The Act applies in relation to countries that are declared by regulations made under the Act to be "extradition countries", subject to the terms of applicable bilateral extradition treaties, multilateral extradition treaties (in force between Australia and the Party concerned) or as may otherwise be provided for in regulations made under the Act.

50. A magistrate must first be satisfied that the necessary supporting documents have been presented to the magistrate, the offence for which the person's extradition is sought would also be an extraditable offence under Australian law and the person whose extradition is sought has not demonstrated a valid ground to prevent the extradition. The Federal Attorney-General must then be satisfied that there are no valid grounds to prevent the extradition, that the person whose extradition is sought will not be subjected to torture and will not be subjected to the death penalty for the offence for which the person's extradition is sought.

51. Valid grounds to prevent the extradition are specified in the Act and include the fact that the offence for which extradition is sought is a political offence. The Act specifies, however, that none of the offences established under the international counter-terrorism instruments to which Australia is a Party is a political offence. See the response to sub-paragraph 3(d) for the list of instruments to which Australia is a Party.

52. Other valid grounds to prevent extradition are that the extradition is actually sought for the purpose of prosecuting or punishing the person on account of his or her race, religion, nationality or political opinions, that the person may be prejudiced at his or her trial, or punished, detained or restricted in his or her personal liberty, by reason of his or her race, religion, nationality or political opinions, that the prosecution would infringe the principle of double jeopardy, or that the conduct or equivalent conduct would have constituted an offence under the military law, but not also under the ordinary criminal law of Australia.

Cooperation between law enforcement agencies

53. The AFP Operation Drava Team (see response to sub-paragraph 2(c), paragraphs 20 and 21) receives regular electronic updates of the "Watch List" compiled by the US Federal Bureau of Investigation of persons of interest in relation to the 11 September 2001 terrorist attacks on the US. The AFP coordinates an Australia-wide response to this list, running the names and other details in it through Australian law enforcement databases and reporting any matches or related intelligence to the FBI Legal Attaché based in the US Embassy in Canberra.

54. In addition, Australia's security and intelligence agencies have in place well established arrangements with international counterparts to facilitate the exchange of security and intelligence information. The AFP has liaison officers with regional responsibilities based in Australian diplomatic missions in Washington, Los Angeles, Buenos Aires, London, Rome, The Hague, Beirut, Islamabad, Beijing, Hong Kong, Singapore, Hanoi, Jakarta, Rangoon, Bangkok, Kuala Lumpur, Manila and Port Moresby.

Sub-paragraph 2(g) *Decides also that all States shall ... Prevent the movement of terrorists or terrorist groups by effective border controls and controls on issuance of identity papers and travel documents, and through measures for preventing counterfeiting, forgery or fraudulent use of identity papers and travel documents;*

Border Controls At Airports and Seaports

55. The two main aspects of Australian Border Control are the obligations of international carriers bringing persons to Australia and the requirement that all persons arriving at Australian ports must undergo immigration clearance before entering the country.

56. Under the *Migration Act 1958*, international carriers are obliged to ensure that passengers they bring into Australia:

- have in their possession evidence of a valid visa for travel to Australia; or
- have in their possession an Australian passport or other prescribed evidence of identity and Australian citizenship; or

- are eligible for the grant of a special category visa; or

- hold a special purpose visa; or

- hold an Electronic Travel Authority.

57. The Act provides for penalties of up to A$10,000 on carriers who bring inadequately documented passengers to Australia or who have one or more concealed persons on board the vessel on arrival in Australia. At some overseas airports, where there is a known high risk of abuse of Australia's entry and visa systems, Australia based staff assist carrier staff to identify bogus, forged or inadequate documentation held by passengers seeking to board flights for Australian ports.

58. Automated information systems developed by the Australian Government assist international carriers meet their obligations. The Advance Passenger Processing System allows certain private sector organisations, such as airlines and shipping companies, to provide information about persons intending to travel Australia in advance of their arrival. Currently, advanced passenger information is received on nearly 50% of arriving passengers. Some carriers also have access to the Electronic Travel Authority System, which enables these carriers to check the visa status of non-citizens to prevent persons who may be of concern to Australia from travelling.

59. The *Migration Act 1958* requires non-citizens seeking entry to Australia to present to a clearance officer evidence of their identity and of a visa that is in effect and is held by the person as well as a completed incoming passenger card. The authenticity of visas and travel and identity documents presented at immigration clearance is established by cross checking with data contained in Australian Government databases.

60. The Travel and Immigration Processing System (TRIPS) provides access to details of all Australian visas issued overseas. When passengers arrive in Australia, the scanning or manual entry of a visa or passport number provides confirmation that the document was issued to that particular passenger. The Passenger Analysis Clearance and Evaluation (PACE) system in place at the border links with TRIPS to obtain the relevant data, to determine if the passenger is on any immigration alerts list and detect any anomalies.

61. Officers of the Australian Customs Service undertake primary immigration examination of passengers on behalf of the Department of Immigration and Multicultural and Indigenous Affairs. The responsibilities of Customs Officers include the following:

- identifying passengers and their citizenship against travel documents (face to passport check);

- checking the completed passenger cards against the passport and ensuring that the passenger cards are correctly completed; and

- checking passenger's passport/visa numbers against the PACE/TRIPS system.

62. In addition, Immigration and Customs staff working at airports undergo training in document fraud to assist them in identifying bogus documents.

63. Where a passenger's documentation is not in order, or where there are suspicions regarding their *bona fides*, an Immigration Inspector is called to the primary line to undertake secondary examination. If necessary, the passenger is taken to a room to be interviewed. If required, an interpreter is telephoned to assist with the interview. A decision is made to either allow or refuse entry.

Australian Travel Documents

64. Australia's passport issuing systems are "state of the art" and are based on the latest available scanning, imaging, character recognition and workflow technologies. There are more than one hundred identity and integrity checks built into the systems. On line verification is used with citizenship and births, deaths and marriages databases. The issuing systems are built around the Passport Issuing and Control System (PICS). PICS incorporates inventory and stock controls and a data base that contains full details of all applications and passports issued including digital images of the holders of all current past pass20 December 2001port holders back to 1990. The data base is available on line for interrogation by officers processing passport applications. Limited access to the data base is also available to border control agencies.

65. The Australian passport was the first to incorporate the printing of digital images on the reverse of laminate substrates. A new passport is currently under developments and will be introduced in mid 2003. It will embrace the latest available technologies and will include several innovations which will result in enhanced security and integrity.

Document for travel to Australia

66. The Department of Immigration and Multicultural and Indigenous Affairs issues a document for travel to Australia (DFTTA) to visa applicants who have met the criteria for grant of a visa in one of the offshore humanitarian subclasses, or a provisional spouse visa, where the visa holder does not hold, or cannot obtain, an acceptable travel document for visa evidencing and travel to Australia. In both cases, the visa applicants would have been assessed against the criteria for the grant of a visa, including the character requirements.

67. The DFTTA provides for a single journey to Australia and is not meant to be a long-term substitute for a passport or other identity documents. A DFTTA is not generally issued to

holders of visitor or temporary entry visas as it does not provide a right of return to their country of origin or entry to another country.

Operative Paragraph 3

Sub-paragraph 3(a) *Calls upon all States to ... Find ways of intensifying and accelerating the exchange of operational information, especially regarding actions or movements of terrorist persons or networks; forged or falsified travel documents; traffic in arms, explosives or sensitive materials; use of communications technologies by terrorist groups; and the threat posed by the possession of weapons of mass destruction by terrorist groups;*

68. The Australian Government has intensified its collection of operating information in relation to the actions or movements of terrorists or their networks, the illegal use of travel documents, trafficking in conventional arms or sensitive materials, and on the threat posed by terrorists' possession of weapons of mass destruction. The Australian Government has also accelerated the exchange of such information, through new formal consultative mechanisms as well as the encouragement of more regular informal exchanges.

69. The Department of Foreign Affairs and Trade has established an Anti-Terrorism Taskforce, which, in addition to providing timely advice to Ministers of State on the international aspects of Australia's response to terrorist attacks, serves as the main point of liaison and coordination with other departments and agencies and with foreign governments on anti-terrorism issues. The Taskforce ensures that all government agencies and organisations with an anti-terrorist role are undertaking their duties in accordance with Australia's responsibilities under Resolution 1373.

70. On the specific question of firearms, the Federal Government, along with the States and Territories, have taken steps to enhance the exchange of information in regard to the illicit trafficking of firearms within Australia and our region. A dedicated Firearms Trafficking Intelligence Desk was established within the NSW Police Service, to enhance the analysis and exchange of intelligence relating to firearms trafficking in Australia. The illicit trade of firearms is an offence in all Australian States and Territories. Jurisdictions routinely exchange operational information in regard to such offences where there is a cross-jurisdictional dimension.

71. At the regional level, Australia participated in a sub-committee of the South Pacific Forum, the South Pacific Chiefs of Police Conference, which developed a common regional approach to weapons control. Part of this common approach included a framework for the exchange of information in relation to the illicit trafficking of firearms. Australia has also hosted a Pacific Islands Forum Small Arms Workshop, to further enhance the ability of Pacific Island states to counter the illicit trafficking of firearms through measures including the effective exchange of operational information.

Sub-paragraph 3(b) *Calls upon all States to ... Exchange information in accordance with international and domestic law and cooperate on administrative and judicial matters to prevent the commission of terrorist acts;*

72. General measures relating to law enforcement cooperation is provided in the response to sub-paragraphs 2(b), paragraph 21, 2(f), in particular paragraphs 53 and 54 and 3(a), paragraphs 70 and 71. In addition, amendments to the *Financial Transaction Reports Act 1988* referred to in the response to sub-paragraph 1(a) at paragraph 3 will enable the Australian Transaction Reports and Analysis Centre to share financial transaction reports information with other countries and the Australian Security Intelligence Organisation and the Australian Federal Police, subject to appropriate monitoring and approvals, to share such information with equivalent agencies overseas.

Sub-paragraph 3(c) *Calls upon all States to ... Cooperate, particularly through bilateral and multilateral arrangements and agreements, to prevent and suppress terrorist attacks and take action against perpetrators of such acts;*

40 bilateral extradition and 23 bilateral mutual assistance treaties or arrangements.

73. Australia is working with Member States of the Commonwealth of Nations to identify a constructive role for the Commonwealth in global efforts to combat terrorism. This will build on the Commonwealth Leaders Statement on Terrorism. A Commonwealth Ad Hoc Ministerial Meeting on Terrorism will take place in London on 29 January 2002. Ministers will recommend to Commonwealth Leaders practical measures the Commonwealth can take to assist members to become parties to and implement the UN anti-terrorism Conventions, to enhance law enforcement cooperation and exchange of information.

74. Australia is also a member of the Financial Action Task Force on Money Laundering, and is participating in developing, implementing and promoting new international standards to combat terrorist financing designed to deny terrorists and their supporters access to the international financial system.

Sub-paragraph 3(d) *Calls upon all States to ... Become parties as soon as possible to the relevant international conventions and protocols relating to terrorism, including the International Convention for the Suppression of the Financing of Terrorism of 9 December 1999;*

75. Australia is already a Party to the following conventions and protocols relating to terrorism:

- Convention on Offences and Certain Other Acts Committed on Board Aircraft (Tokyo 1963)

- Convention for the Suppression of Unlawful Seizure of Aircraft (The Hague 1970)
- Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Montreal, 1971)
- Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation (Montreal, 1988)
- Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (Rome, 1988)
- Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (Rome, 10 March 1988)
- Convention on the Physical Protection of Nuclear Material (Vienna, 1980)
- International Convention against the Taking of Hostages (New York, 1979)
- Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (New York, 1973)

76. Australia has signed but not yet ratified the *International Convention for the Suppression of the Financing of Terrorism* (New York, 1999).

77. Australia intends to ratify the *International Convention for the Suppression of the Financing of Terrorism* (New York, 1999) and accede to the *International Convention for the Suppression of Terrorist Bombings* (New York, 1997) as soon as the necessary legislation is in place to implement them.

Sub-paragraph 3(e) *Calls upon all States to ... Increase cooperation and fully implement the relevant international conventions and protocols relating to terrorism and Security Council resolutions 1269 (1999) and 1368 (2001);*

78. Australia has fully implemented the nine instruments relating to terrorism to which it is a Party.

79. The *Crimes (Aviation) Act 1991* implements the *Convention on Offences and Certain Other Acts Committed on Board Aircraft* (Tokyo 1963), the *Convention for the Suppression of Unlawful Seizure of Aircraft* (The Hague 1970) the *Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation* (Montreal, 1971) and the *Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation* (Montreal, 1988).

80. The *Crimes (Ships and Fixed Platforms) Act 1992* implements the *Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation* (Rome, 1988) and the *Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf* (Rome, 1988).

81. The *Nuclear Non-Proliferation (Safeguards) Act 1987* implements the *Convention on the Physical Protection of Nuclear Material* (Vienna, 1980).

82. The *Crimes (Hostages) Act 1989* implements the *International Convention against the Taking of Hostages* (New York, 1979).

83. The *Crimes (Internationally Protected Persons) Act 1976* implements the *Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents* (New York, 1973).

84. Aspects of the instruments relevant to law enforcement cooperation are implemented through the *Extradition Act 1988* and the *Mutual Assistance in Criminal Matters Act 1987* and regulations made under these Acts.

Sub-paragraph 3(f) *Calls upon all States to ... Take appropriate measures in conformity with the relevant provisions of national and international law, including international standards of human rights, before granting refugee status, for the purpose of ensuring that the asylum-seeker has not planned, facilitated or participated in the commission of terrorist acts;*

85. A protection visa may be refused pursuant to Article 1F of the *Convention relating to the Status of Refugees* (Geneva, 1951), which states that the Convention does not apply where there are serious reasons for believing that a person has committed certain crimes, including war crimes, crimes against humanity and serious non-political crimes. All offences established by the counter-terrorism instruments to which Australia is a Party are considered serious non-political offences.

86. Claims of all protection visa applicants are carefully scrutinised. Officers assessing such claims receive thorough training that provides guidance and assistance on aspects such as weighing evidence, including issues of credibility and bias. They have access to guidelines on what constitutes serious reasons for considering a relevant crime has been committed, the standard of proof necessary and a definition of the relevant crimes. These officers also have access to extensive advice on a case by case basis should relevant information arise during assessment of claims.

87. All visa applicants are required to declare if they have ever committed, or been involved in the commission of, war crimes, crimes against humanity or human rights abuses. Applicants who declare that they have been involved in such activities are liable to have their visas refused

under section 501 of the *Migration Act 1958* or Article 1F of the Convention in the protection visa application context.

88. Information about involvement in such crimes may be disclosed by an applicant on their application or during the interview process to explain why they fear persecution and to strengthen their claims for protection. Such information may also come from community sources. If any information relating to terrorism or other serious criminal activity comes to light during the protection assessment process, appropriate law enforcement and security agencies are alerted to enable more thorough investigations to commence.

89. Decision-makers retain discretion not to refuse or cancel a visa under the character provisions of the *Migration Act 1958*. In considering the exercise of the discretion, decision-makers must have regard to various factors. For example, where a child is involved, the best interests of the child must be considered. International obligations arising under the *Convention Against Torture and Other Cruel, Inhuman or Degrading Punishment* and the *International Covenant on Civil and Political Rights* must also be considered before a person can be removed.

Sub-paragraph 3(g) *Calls upon all States to ... Ensure, in conformity with international law, that refugee status is not abused by the perpetrators, organizers or facilitators of terrorist acts, and that claims of political motivation are not recognized as grounds for refusing requests for the extradition of alleged terrorists;*

90. The procedures referred to in the response to sub-paragraph 2(e) for establishing whether a non-Australian citizen applying for a visa to enter Australia is of character or security concern also apply in relation to protection visas (see paragraphs 23 to 28).

91. As noted in the response to sub-paragraph 2(f) (paragraphs 47 and 51), none of the offences established by the international counter-terrorism instruments to which Australia is a Party is recognised as a "political offence" for the purposes of extradition or the provision of mutual legal assistance in criminal matters under Australian law.